

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:

**DAVID LEE TIPTON
And
CHERYL LEIGH TIPTON**

**Case No. 09-32757-KRH
Chapter 7**

Debtors.

MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT

COMES NOW the Chapter 7 Trustee, Roy M. Terry, Jr. (the “Trustee”), by counsel, and moves this Court for approval of the compromise and settlement with Ryan and Jennifer Paterson (“Paterson”), pursuant to Federal Rule of Bankruptcy Procedure 9019, and in support thereof, states as follows:

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On April 30, 2009, David and Cheryl Lee Tipton (“Debtors”) filed for relief in the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) under chapter 7 of the United States Bankruptcy Code.

3. Roy M. Terry, Jr. was appointed as interim trustee and continues to serve in that capacity.

4. On September 1, 2006, the Patersons signed a Promissory Note (“Note”) agreeing to pay David Tipton (“Tipton”) \$100,000 plus interest for the conveyance of real property with

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an address of 12103 Sawhill Boulevard, Spotsylvania, Virginia 22553.

5. Upon information and belief, the real estate lacks sufficient value to secure the obligation and the Patersons have an inability to pay the Note in full.

6. The Trustee and the Patersons have agreed to settle all matters relating to the Note whereby the Patersons shall pay the Trustee, over a term of eight months, the total sum of forty thousand dollars (\$40,000.00) with six percent interest applied to the monthly balance in full and complete satisfaction of any claims the Trustee may have related to the Note (the "Potential Claims").

Settlement and Compromise

7. Based on an analysis of the Potential Claims, including the cost and expense of further litigation, the Trustee and the Patersons have determined that it is in their best interests to settle the Potential Claims. Pursuant to the terms of the settlement, the Patersons shall pay the Trustee over a term of eight months, the total sum of forty thousand dollars (\$40,000.00) with six percent interest applied to the monthly balance. The first monthly installment of \$5,112.50 is due on May 15, 2010 or upon court approval, whichever is later, and thereafter monthly installments in the same amount are due on the 15th of each month with the last monthly payment due on December 15, 2010. There will be no penalty for early payment of the entire balance.

8. Upon payment in full of the \$40,000.00 plus interest as provided for in the Settlement Agreement, the Patersons will be released forever from all further claims of the Trustee and the Tipton bankruptcy estate and the Trustee will sign all documents and provide all information necessary to remove or mark satisfied and paid in full the Deed of Trust related to the Promissory Note that is recorded currently in the land records of Spotsylvania County.

Points and Authorities

9. In determining whether to approve a compromise, the Court must look at various factors and determine whether the compromise is in the best interest of the estate and whether it is fair and equitable to the creditors of the estate. *In re Frye*, 216 BR 166, 175 (Bankr.E.D. Va. 1997). These factors include: (1) the probability of success in litigation; (2) the potential difficulties, if any, in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delays necessarily attending it; and (4) the paramount interest of the creditors. *Id.*

10. After reviewing the facts underlying the Potential Claims, the claims and/or defenses that may be asserted by any of the parties, and the potential cost and expense of litigating the matters, the Trustee has determined that the balance of the costs and benefits favors resolving these matters as provided by the settlement and compromise described herein.

WHEREFORE, Roy M. Terry, Jr., Chapter 7 Trustee, prays that the Court enter an order: (a) approving the proposed compromise and settlement; and (b) granting such other and further relief as may be just and proper.

Respectfully submitted this the 11th day of May, 2010.

/s/ John C. Smith

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Certificate of Service

I hereby certify on the 11th day of May, 2010, a true copy of the foregoing Motion was delivered by electronic means and/or mailed first class mail, postage fully prepaid, to the parties on the attached service list.

/s/ John C. Smith

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Home Depot Credit Services
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